SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 751

COMMISSIONER OF INTERNAL REVENUE

vs.

AMELIA E. COLLINS

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Certificate from U. S. C. C. A., Ninth Circuit	1	1
Statement	1	1
Question certified	3	3
Judges' signatures	4	3
Clerk's certificate [omitted in printing]	4	3

680668—46

We, who include the writer of the opinion in Commissioner v. Green, hereafter referred to, are in grave doubt concerning the personal liability of a transferee for interest so paid and the payor's right to deduct such interest payment in computing her income tax. The Eighth Circuit in Nunan v. Green, 146 F. 2d 352, the Fifth Circuit in Commissioner v. Henderson, 147 F. 2d 619, and this circuit in Commissioner v. Green, 148 F. 2d 157, have held that the taxpayer may not deduct interest so paid in computing taxpayer's personal income tax.

No one of the opinions in these cases considered the decision of the Supreme Court in Dobson v. Commissioner, 320 U. S. 489, respecting the value of conforming to the Tax Court's decisions.

More recently the Third Circuit in Commissioner v. Breyer, 151 F. 2d 267, 270, has decided to the contrary and upheld such deduction. In that decision full consideration is given and reliance had upon the Dobson decision in which it is said

"* * * when the court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision of the Tax Court must stand,"

and emphasized that the members of that court

"not infrequently bring to their task long legislative or administrative experience in their subject. The volume of tax matters flowing through the Tax Court keeps its members abreast of changing statutes, regulations, and Bureau practices, informed as to
3 the background of controversies, and aware of the impact of the decisions on both Treasury and taxpayer * * * Congress has invested the Tax Court with primary authority for redetermining deficiencies, which constitutes the greater part of tax litigation. This requires it to consider both law and facts. * * * In deciding law questions courts may properly attach weight to the decision of points of law by an administrative body having special competence to deal with the subject matter. The Tax Court is informed by experience and kept current with tax evolution and needs by the volume and variety of its work. While its decisions may not be binding precedents for courts dealing with similar problems, *uniform administration would be promoted by conforming to them where possible.*" [Italics supplied.] Dobson v. Commissioner, 320 U. S. 489 at page 520 and page 498.

With this conflict of decision and opinion in the circuits on this often appearing and important question of the character of the transferee's liability, the situation, after the decision in Commissioner v. Breyer adverse to the Commissioner, was clearly one for certiorari within Supreme Court Rule 38. However, we are ad-

vised that the Commissioner has not sought certiorari in that case, and the confusion of authority remains. Hence, in addition to our grave doubt in this conflict of decision, cf. Lang v. Commissioner, 304 U. S. 264, certification seems to us the most expeditious method of serving the litigants before us and the profession at large.

Question

For our instruction for the proper disposition of this cause, we certify to the Supreme Court the following question:

A taxpayer is a transferee by distribution of property from an estate in probate, which estate owes an estate tax to the United States but which is neither assessed nor paid at the time of distribution. Thereafter the federal estate tax is returned and the tax assessed. Such taxpayer pays the estate tax, including the interest thereon, from taxpayer's personal funds. Is such a taxpayer, in his return of gross income for the year in which such interest
4 is paid, entitled to deduct from such gross income the amount of such interest in computing his income tax liability for that year?

Dated at San Francisco, California, January 9, 1946.

WILLIAM DENMAN,
United States Circuit Judge.
HOMER T. BONE,
United States Circuit Judge.
WILLIAM E. ORR,
United States Circuit Judge.

(Endorsed:) Certificate certifying certain question of law to the Supreme Court of the United States upon which the United States Circuit Court of Appeals for the Ninth Circuit desires instruction for the proper decision of a cause. Filed January 9, 1946. Paul P. O'Brien, Clerk.

[Clerk's certificate to foregoing paper omitted in printing.]

(Endorsement on cover:) File No. 50454. U. S. Circuit Court of appeals, Ninth Circuit. Term No. 751. Commissioner of Internal Revenue vs. Amelia E. Collins. On Certificate. Filed January 15, 1946. Term No. 751 O. T. 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 1 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1945

No. 751.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

AMELIA E. COLLINS,

Respondent.

On Certificate From the Circuit Court of Appeals for the Ninth Circuit on Petition for Review of Decision of the Tax Court of the United States.

Application by Respondent to Require Entire Record to be Sent Up.

JOSEPH D. BRADY,
W. L. NOSSAMAN,
433 South Spring Street, Los Angeles 13, California,
Counsel for Respondent.

January 25, 1946.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

TABLE OF AUTHORITIES CITED.

	PAGE
Internal Revenue Code, Sec. 900(a)(1), (2) and (e)	2
Revised Statutes 3466 (31 U. S. C., 1940 Ed., Sec. 191)	2
Revised Statutes 3467	2, 3
Rules of the Supreme Court of the United States, Rule 37	4
United States Codes, 1940 Ed., Title 26, Sec. 900	2
United States Codes, 1940 Ed., Title 31, Sec. 192	2

IN THE

Supreme Court of the United States

October Term, 1945

No. 751.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

AMELIA E. COLLINS,

Respondent.

Application by Respondent to Require Entire Record to be Sent Up.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Now comes Amelia E. Collins, respondent in the above entitled cause, and respectfully represents:

(1) That by Certificate dated January 9, 1946, the Circuit Court of Appeals for the Ninth Circuit certified the following question to this Court:

> A taxpayer is a transferee by distribution of property from an estate in probate, which estate owes an estate tax to the United States but which is neither assessed nor paid at the time of distribution. Thereafter the federal estate tax is returned and the tax assessed. Such taxpayer pays the entire tax, including the interest thereon, from taxpayer's personal funds. Is such a taxpayer, in his return of gross

income for the year in which such interest is paid, entitled to deduct from such gross income the amount of such interest in computing his income tax liability for that year?

(2) The above question relates solely to the right of the respondent taxpayer to deduct from gross income interest upon an estate tax deficiency which she, a transferee of estate property, paid. Both in the Tax Court and in the Circuit Court of Appeals the taxpayer contended that the liability upon the estate tax debt to the United States was her indebtedness, and that such liability arose not only because she *received* the estate (that is, was a transferee) but because she, a fiduciary, *distributed* the estate without paying the federal estate tax, thereby incurring a personal liability under the former R. S. 3467, now 31 U. S. C., 1940 ed., Section 192.

The brief of the Commissioner before the Ninth Circuit set out, under the heading "Statutes Involved," not only the "transferee" provisions (I. R. C. Sec. 900(a)(1), (2), and (e); 26 U. S. C. 1940 ed., Sec. 900), but also the "fiduciary" provisions (R. S. 3466, 31 U. S. C. 1940 ed., Sec. 191; and R. S. 3467, 31 U. S. C. 1940 ed., Sec. 192.) All of these statutory provisions are pertinent to the determination of the single issue, namely, the right of respondent to deduct the amount of interest, which accrued, in its entirety, *after* the distribution of her deceased husband's estate by her as executrix to herself as sole distributee.

(3) We respectfully submit that "the whole matter in controversy" (Rule No. 37) in this case cannot be disposed of without the consideration by this Court of the additional question referred to under (2) above. In this

connection we respectfully call attention to the fact that if the Court should decide the question certified to it by the Circuit Court of Appeals in favor of the Government, there would still remain for disposition by this Court or by the Circuit Court of Appeals the question, which is of great importance in the administration of the revenue statutes, arising under the former R. S. 3467. The resolution of this question in favor of the taxpayer would require affirmance of the decision of the Tax Court, irrespective of the decision on the transferee question.

(4) Immediately upon receipt of the Circuit Court of Appeals' Certificate to this Court, we, as counsel for respondent taxpayer, called the attention of the Circuit Court of Appeals to the above matters by letter to the Honorable William Denman dated January 12, 1946. In response to this letter we received from Judge Denman a letter dated January 15, 1946, which so far as relevant for the present purpose reads as follows:

> "There is a hesitancy on the part of the courts of appeal to certify an entire case. In a very large percentage of certifications of questions, *when accepted,* the Supreme Court grants such a petition by a litigant as is described in paragraph 2 of its Rule 37." (Emphasis Judge Denman's.)

(5) The excerpt just quoted from Judge Denman's letter shows, we believe, the reasons which actuated the Court in certifying only one of the questions pertaining to a single issue and not the entire case. We respectfully

submit that the case is peculiarly one in which it is desirable and we believe necessary that the entire record be sent up to this Court in order that it may consider and decide the whole matter in controversy, as provided in Rule 37. In accordance with that Rule, we submit herewith a certified copy of the entire record.

We respectfully request that the Court make an order requiring the entire record to be sent up.

Respectfully submitted,

JOSEPH D. BRADY,
W. L. NOSSAMAN,
Counsel for Respondent.

January 25, 1946.

No. 751. COMMISSIONER OF INTERNAL REVENUE *v.* COLLINS. On certificate from the Circuit Court of Appeals for the Ninth Circuit. February 25, 1946. *Per Curiam:* It appearing that the Commissioner of Internal Revenue has dismissed his petition for review in the Circuit Court of Appeals for the Ninth Circuit, the certificate is dismissed as moot. *Solicitor General McGrath* for petitioner. *Joseph D. Brady* for respondent. Reported below: 153 F. 2d 1022.